

TOW SERVICES AGREEMENT

This Tow Service Agreement ("TSA" or "this Agreement") is dated _____, 2018 ("Effective Date") and is between City of Manhattan Beach, a California municipal corporation ("City") and Van Lingen Towing, a California corporation ("Operator"). City and Operator are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

- A. City and Operator agree that Operator shall have the non-exclusive right to be called upon by the Chief of Police to provide tow services for City pursuant to the terms of this Agreement.
- B. Operator represents that it is fully qualified to perform such services by virtue of its experience, training, staffing and equipment.

1. TOW SERVICES

- A. Nothing in this TSA shall prohibit the City of Manhattan Beach Police Department ("MBPD") from requesting another tow company when it determines the necessary resources to clear a hazard as expeditiously as possible are not available from Operator.
- B. Regardless of the class of tow truck utilized or responding to the call, charges shall not be more than for the class of vehicle towed or serviced, except where vehicle recovery operations (as defined in ATTACHMENT A) require a larger class of tow truck.
- C. When Operator fails to answer the phone, is unable to respond, is unable to perform the required service, refuses to respond or provide service, or is cancelled due to excessive response time, MBPD reserves the right to request services from another tow company. If it is determined that Operator is not needed and the call is cancelled by the MBPD, up to and including arrival at the scene, there shall be no charges.
 - 1) If Operator is cancelled by the vehicle's owner or agent prior to Operator taking possession (as defined in ATTACHMENT A) of the vehicle, there shall be no charges for towing. Operator shall immediately contact the MBPD and advise it of the cancellation.
 - 2) If service, other than towing and recovery, has begun and is cancelled by the vehicle's owner or agent, Operator may charge one-half of the regular hourly service charges, for the time expended on the call. For purposes of cancellation, service begins when physical work on the vehicle has begun, not the response. No lien shall arise for the service unless Operator has presented a written statement to the vehicle's owner or agent for the signed authorization of services to be performed.

- 3) Operator shall not attempt to take possession of the vehicle in order to establish a lien for any non-towing services performed, or begun and subsequently cancelled, when not entitled to such lien by law. (Refer to California Civil Code section 3068.1 for when a lien begins.)
- D. Generally, Operator may dispatch more than one tow truck to a multi-vehicle collision scene in response to a tow call.
- E. The MBPD Incident Commander may direct Operator to move vehicles to help clear a roadway or for lifesaving operations. Operator shall provide the assistance as directed. There shall be no charge for this assistance.
- F. MBPD may request tow services on a special needs basis, including but not limited to, special enforcement activities, safety checkpoints, special events and D.U.I. checkpoints.

2. TOW TRUCK CLASSIFICATIONS

- A. Operator shall equip and maintain tow truck(s) covered under this Agreement in accordance with the provisions set forth in the California Vehicle Code, Title 13 of the California Code of Regulations, the specifications contained in this Agreement, and consistent with industry standards and practices.
 - 1) Notwithstanding California Vehicle Code Section 615, all tow trucks shall have recovery capabilities, wheel lift capabilities, and a boom meeting the specifications contained in this Agreement. For the purpose of this Agreement, "a trailer for hire that is being used to transport a vehicle" shall not qualify as a primary tow truck for rotation tow lists. A car carrier may be exempted from the recovery, wheel lift, and boom capability requirements.
- B. A violation of the Gross Vehicle Weight Rating ("GVWR") and safe loading requirements of a tow truck shall be cause for immediate termination. This includes exceeding the tow truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or not maintaining 50 percent of the tow truck's unladen weight on the front axle when lifting/carrying a load.
- C. There will be four classes of tow trucks covered under this Agreement.
 - 1) Class A – Light Duty
 - a) Operator shall maintain a minimum of one tow truck that has a manufacturer's GVWR of at least 14,000 pounds. Class A equipment specifications can be found in **ATTACHMENT B** of this Agreement.
 - 2) Class B – Medium Duty
 - a) Operator shall maintain a minimum of one tow truck with a GVWR of at least 26,001 pounds. The truck shall be capable of providing

and maintaining continuous air to the towed vehicle. Class B equipment specifications can be found in **ATTACHMENT B** of this Agreement.

3) Class C – Heavy Duty

- a) Operator shall maintain at least one three-axle tow truck with a GVWR of at least 48,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle. Class C equipment specifications can be found in **ATTACHMENT B** of this Agreement.

4) Class D – Super Heavy Duty

- a) Operator shall maintain at least one three-axle tow truck with a GVWR of at least 52,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle. Class D equipment specifications can be found in **ATTACHMENT B** of this Agreement.

- D. To properly and safely tow and service the wide variety of vehicles being operated on the highway, a towing procedure may require the use of auxiliary equipment specifically designed for the purpose. This auxiliary equipment should be used when appropriate. A listing of service and auxiliary equipment for each classification can be found in **ATTACHMENT B** of this Agreement.

3. TOW COMPANY EMPLOYEES

- A. Operator shall ensure all employees of the tow company including tow truck drivers are qualified and competent. Operator shall ensure that the tow truck drivers are trained and proficient in the use of the tow truck and related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles. Operator shall ensure tow truck drivers responding to a call initiated by MBPD have one of the following:
 - 1) A minimum of five years or more of tow truck driver experience verified in writing by Operator and driver.
 - 2) The driver has completed a tow truck driver training program within the last five years. Documentation of the above-mentioned experience or training shall be submitted with the Tow Operator/Driver Information form.
- B. The Class A (1) license must be endorsed to allow operation of special vehicle configurations and/or special cargoes (refer to **ATTACHMENT B**).
- C. Tow drivers shall perform all towing and recovery operations in the safest and most expedient manner possible. Tow truck drivers shall be at least 18 years of age and shall possess the following minimum class driver's license:

- 1) Class A tow truck – A valid Class C license or a valid Class A license with valid medical certificate.
- 2) Class B tow truck – A valid Class C license for non-regulated vehicles or a valid Class A license with valid medical certificate for regulated vehicles pursuant to California Vehicle Code section 34500.
- 3) Class C tow truck – A valid Class A license with valid medical certificate.
- 4) Class D tow truck – A valid Class A license with valid medical certificate.

D. Operator shall maintain a current list of drivers and Employees.

- 1) Operator shall provide a current list of his/her drivers and employees to MBPD upon implementation of this Agreement. Operator shall notify the MBPD upon any change in driver status or employee status, including the addition of any new driver(s) or employee, or the deletion of any driver or employee. An updated list shall be provided to the MBPD within seven calendar days of any change in driver or employee status. This includes all employees having contact or access with vehicles towed or having contact or access to administrative records.
- 2) Operator shall, as a minimum, continuously maintain the following written or computerized record information for each employee:
 - a) Full name
 - b) Date of birth
 - c) California driver's license number
 - d) Copy of valid medical certificate (if required by type of license possessed)
 - e) Job title/description
 - f) Current home address
 - g) Current home telephone number
 - h) Type(s) of truck(s) driver has been trained and instructed to operate

E. All tow truck drivers of Operator shall be enrolled in the Employer Pull Notice Program ("EPN").

- 1) Upon the addition of new drivers, Operator will be granted a maximum of 30 days to enroll drivers in the Pull Notice Program.
- 2) Pull Notices shall be kept on file, signed and dated by Operator.

3) The Chief of Police may require Operator to provide copies of Pull Notice Reports to the MBPD.

- F. Uniforms: Tow drivers shall wear an identifiable uniform shirt displaying the company and driver's names while engaged in MBPD tow operations. They will not wear any hat, head covering, or garment that displays any logo other than the logo of Operator.
- G. Safety Vests: Tow drivers shall wear a safety vest or reflectorized clothing, meeting Occupational Safety and Health Administration ("OSHA") requirements.
- H. All employees of Operator shall be subject to a criminal background check and meet the requirements of the MBPD regarding past criminal convictions, parole status, and probation status.

4. FEES

- A. Fees charged for response to calls originating from MBPD shall be established by City Council resolution. The fees may be reviewed by City Council every four years and may be modified at any time.

5. RESPONSE TO CALLS

- A. Operator shall respond to MBPD calls 24 hours a day, seven days a week, within the maximum response time of 30 minutes. Operator shall respond with a tow truck of the class required to tow the vehicle specified by MBPD. Operator shall advise MBPD dispatch, at the time of notification, if it is either unable to respond or unable to meet the maximum response time.
- B. Repeated failure(s) to meet the maximum response time requirements shall constitute failure to comply with the terms and conditions of this Agreement and is grounds for termination.
- C. Any refusal to respond or to perform the required towing or service will subject Operator to termination, if deemed appropriate by the Chief of Police.
- D. Only the tow truck personnel and equipment requested shall respond to a MBPD call. Additional tow truck personnel and equipment shall be utilized only upon the approval of the MBPD Incident Commander. This shall not preclude Operator from responding to an incident to ascertain if additional assistance or equipment is required. There shall be no additional charge for any personnel or equipment that is not necessary to perform the required service.

6. STORAGE FACILITY

- A. Operator shall maintain adequate security of vehicles and property at the place of storage in accordance with the requirements of this TSA. As a minimum, a clean fenced or enclosed area shall be provided. Operator is responsible for the reasonable care, custody, and control of any property contained in towed or stored

vehicles. The storage yard must conform to all local zoning use requirements then in effect and have any required permits to operate at that location.

- B. Operator shall obtain written approval from MBPD prior to the removal of any property from a stored or impounded vehicle and shall provide a receipt, with a copy placed in the stored vehicle, for all removed property. The requirement to obtain approval from MBPD prior to the removal of property may be excused by the Chief of Police if it is determined that proper safeguards and procedures are utilized by Operator.
- 1) This requirement may not be waived in cases where a vehicle has been impounded for evidence or investigation.
 - 2) With approval from MBPD, Operator shall release personal property from an impounded vehicle at the request of the vehicle owner or his/her agent.
 - a) There shall be no charge for the release of personal property during normal business hours. Operator may charge an after-hours release fee for property released after normal business hours. The fees charged shall be consistent with the after-hours vehicle release provisions. All persons requesting release of personal property will be notified of those fees at the time the request is made.
 - b) Personal property is considered to be items that are not affixed to the vehicle.
 - (1) Personal property includes: papers, transportable cellular telephones, portable radios and/or portable stereo equipment, clothes, luggage, tools, and all other unaffixed contents.
 - (2) Items of personal property in a stored vehicle that are not required as evidence shall be released upon request of the vehicle owner or his/her agent.
 - 3) Cargo not held as evidence shall be released upon demand of the carrier or pursuant to a court order.
- C. The primary storage facility shall normally be at the same location as the business address. If not at the same location, there shall be no charge for any additional distance traveled to and from a secondary location. The vehicle and/or personal property shall be released at the primary storage facility or place of business (when the primary storage facility and the place of business are not at the same location) upon request of the owner or a person having a legal entitlement to the vehicle and/or property.
- 1) Prior to the utilization of new storage facilities that are acquired by Operator, Operator shall obtain the Chief of Police's written approval and furnish the address.

- 2) Secondary storage facilities shall be located reasonably close to the main business office.
- D. Operator shall maintain sufficient storage spaces, as approved by the Chief of Police.
- E. Operator's place of business shall have a sign that clearly identifies it to the public as a towing service. The sign shall have letters that are clearly visible to the public from the street, both day and night.
- F. For the purpose of this Agreement, "normal business hours" shall not be less than 8:00 a.m. to 6:00 p.m., Monday through Friday; and Operator's place of business shall be staffed continuously during these periods, except for the following state-recognized holidays:
 - 1) New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, day after Thanksgiving Day, and Christmas Day.
 - 2) Business hours shall be posted in plain view to the public at both the place of business and/or storage facility.
 - 3) Employees shall be properly trained and supervised in conducting business transactions related to towing, storage and release of vehicles/property.
- G. The release of vehicles shall be conducted in accordance with MBPD procedures.

7. INDEMNIFICATION

- A. To the fullest extent permitted by law, Operator shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Operator, its officers, agents, servants, employees, subcontractors, materialmen, or their officers, agents, servants or employees (or any entity or individual that Operator shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Operator shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Operator shall reimburse the

Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

- B. Operator shall pay all required taxes on amounts paid to Operator under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Operator shall fully comply with the workers' compensation law regarding Operator and Operator's employees. Operator shall indemnify and hold City harmless from any failure of Operator to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Operator under this Agreement any amount due to City from Operator as a result of Operator's failure to promptly pay to City.
- C. Operator shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Operator in the performance of this Agreement. If Operator fails to obtain such indemnity obligations, Operator shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Operator's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, Operators or their officers, agents, servants or employees (or any entity or individual that Operator's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.
- D. Workers' Compensation Acts not Limiting. Operator's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Operator expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- E. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Operator because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.
- F. Survival of Terms. Operator's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

8. INSURANCE

- A. Operator shall maintain the following minimum levels of insurance from an insurance carrier admitted in California and authorized to do business in California:

- 1) Commercial Business Automobile Liability (as required by California Vehicle Code section 16500.5) – Bodily injury and property damage with a combined single limit of not less than \$1,000,000 for Class A tow trucks. The combined limits for Classes B, C, and D shall not be less than \$2,000,000. These minimum standards are to include non-owned and hired auto coverage.

Commercial General Liability Insurance with a minimum limit of \$1,000,000 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000 per project or location. If Operator is a limited liability company, the commercial general liability coverage shall be amended so that Operator and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

- 2) Uninsured Motorist – Legal minimum, combined single limit.
- 3) On-Hook Coverage – Insuring the vehicle in tow with limits based on the size of the tow truck.
 - a) Class A tow truck \$50,000
 - b) Class B tow truck \$100,000
 - c) Class C tow truck \$200,000
 - d) Class D tow truck \$250,000
- 4) Garage Liability – Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than \$500,000.
- 5) Garage Keepers Liability – Shall be the same minimum as on-hook coverage for vehicles in the care, custody, and control of Operator in the storage yard.
- 6) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000 per accident for bodily injury or disease. If Operator has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Operator shall execute a declaration that it has no employees.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, its elected and appointed officials, officers, employees, agents and volunteers as additional insureds.

- D. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Operator's insurance and shall not contribute with it.
- E. Operator's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Operator and Operator's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Operator hereby waives all rights of subrogation against City.
- F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Operator shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Operator shall procure a bond guaranteeing payment of losses and expenses.
- G. Cancellations or Modifications to Coverage. Operator shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date. The issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Operator shall, within two business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.
- H. City Remedy for Noncompliance. If Operator does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Operator's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Operator's expense, the premium thereon. Operator shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Operator.
- I. Evidence of Insurance. Prior to the performance of services under this Agreement, Operator shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to City's approval. Operator may provide complete, certified copies of all required insurance policies to City. Operator shall maintain current endorsements on file with City's Risk Manager. Operator shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Operator shall furnish such proof at least two weeks prior to the expiration of the coverages.

- J. Indemnity Requirements not Limiting. Procurement of insurance by Operator shall not be construed as a limitation of Operator's liability or as full performance of Operator's duty to indemnify City under Section 8 of this Agreement.
- K. Subcontractor Insurance Requirements. Operator shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

9. INSPECTIONS

- A. Operator must pass not less than one annual inspection of all tow trucks by a qualified law enforcement agency. The Chief of Police, at his sole discretion, may accept a CHP inspection to fulfill this requirement. MBPD may conduct additional inspections without notice during normal business hours. The Operator shall not dispatch a tow truck (to a MBPD call) that has not been inspected and approved by the MBPD. Any tow truck that fails an inspection is entitled to only one re-inspection. Failure to pass the re-inspection shall be cause for the disqualification of the tow truck from use.
- B. If 80 percent of Operator's tow trucks fail the initial annual inspection, no re-inspection will be allowed. This is grounds for contract termination.

10. BUSINESS RECORDS

- A. Operator shall maintain written or computerized records, at his/her place of business of all tow services furnished.
- B. Invoices shall at a minimum include a description of vehicle(s), nature of service, start time, end time, location of call, itemized costs of towing and storage, the tow truck driver's name, and truck used.
- C. Records for each call shall indicate the tow truck driver's name and truck used.
- D. Operator shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, FCC licensing, and non-MBPD tows.
- E. The MBPD may inspect all Operator records without notice during normal business hours.
- F. Operator shall permit MBPD to make copies of business records at its place of business or to remove business records for the purpose of reproduction. MBPD shall provide a receipt for any (original) record removed from the place of business.
- G. Records shall be maintained and available for inspection for a period of two years plus the current term of this TSA.
- H. Failure of the Operator to comply with the inspection requirements shall be cause for termination, if deemed appropriate by the Chief of Police.

11. ANNUAL MEETINGS

The Chief of Police shall conduct, at a minimum, one annual conference with Operator to discuss issues concerning the tow services. All meetings shall be mandatory for Operator or his/her designee. MBPD shall give Operator 30 days' written notice (as defined in **ATTACHMENT A**) of these meetings. The MBPD annual meeting may be held in conjunction with that of the area agencies.

12. DEMEANOR AND CONDUCT

A. While involved in MBPD tow operations or related business, Operator and/or employee(s) shall refrain from any act(s) of misconduct, to include, but not be limited to, any of the following:

- 1) Rude or discourteous behavior.
- 2) Lack of service, selective service, or refusal to provide service, which Operator is/should, be capable of performing, including failure to clean the traffic collision scene or tow scene properly.
- 3) Any act of sexual harassment or sexual impropriety.
- 4) Unsafe driving practices.
- 5) Exhibiting any objective symptoms of alcohol and/or drug use.
- 6) Appearing at the scene of a MBPD tow call with the odor of an alcoholic beverage emitting from his/her breath. The Operator/tow truck driver shall submit to a preliminary alcohol screening test upon demand of MBPD.
- 7) Showing up to a scene without proper equipment such as brooms, absorbent and other equipment required by this Agreement.
- 8) Appearing at a scene with improper or offensive clothing.
- 9) Any violation of the required equipment or safety practice required by the vehicle code.
- 10) Failure to show up at a scene within the allotted time.
- 11) Operator's failure to comply with all applicable federal, state or local laws, ordinances or regulations.

B. All MBPD related tow service complaints received by MBPD against Operator or its employee(s) will be accepted and investigated in a fair and impartial manner. As a result of the investigation, MBPD may initiate disciplinary action as deemed appropriate. In any event, Operator will be notified of the results of any investigation.

- C. Should the filing of criminal charges be a possibility as a result of tow service conduct, MBPD will conduct the investigation to its conclusion or assist the lead investigating agency and, if warranted, request prosecution.
- D. Any violation of this section shall be cause for termination, if deemed appropriate by the Chief of Police.

13. COMPLIANCE WITH LAW

- A. Operator and its employees shall, at all times, comply with all applicable federal, state, and local laws, ordinances and regulations. Any violation of this section shall be cause for termination, if deemed appropriate by the Chief of Police.
- B. Notwithstanding paragraph A of this Section, in the event of a minor traffic violation(s) by tow truck driver(s) which come(s) to the attention of MBPD, Operator will be granted the opportunity to take necessary steps to ensure that its driver(s) drive(s) in compliance with law. Any subsequent traffic violation(s) may be cause for disciplinary action against Operator and/or the involved employee(s). In the event of a flagrant traffic violation, the Chief of Police is authorized to direct Operator to prohibited the driver from the provision of services pursuant to this Agreement.

14. BUSINESS WITH MBPD EMPLOYEES

All business conducted with MBPD employees or their family members by Operator or its employees shall be conducted in a manner consistent with normal business practices without favoritism or prejudice. Operator or its employees shall not knowingly sell any vehicle to MBPD employees or their family members.

15. COMPLIANCE WITH TSA

Operator agrees to comply with all of the terms and conditions of this TSA. Furthermore, Operator agrees that failure by Operator, its agents, or employees to comply with these terms and conditions shall be cause for termination. Alleged violations of this TSA will be investigated by MBPD. Operator will be notified of MBPD's findings within 30 days of the conclusion of the investigation.

16. DEFAULT; TERMINATION

Operator's failure to comply with the provisions of this Agreement shall constitute a default. If the Chief of Police determines that Operator is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Operator with written notice of the default. Operator shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Operator fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

17. REVIEW OF THE TERMS AND CONDITIONS OF THIS AGREEMENT

In the event that there is a legitimate and substantial change in conditions or law affecting Operator or MBPD, the Parties will meet and discuss. Examples of conditions may include, but are not limited to:

- 1) Substantial increase or decrease in business expenses.
- 2) Advances in technology in the industry related to safety issues.
- 3) Changes in law requiring MBPD or Operator to perform specific functions or operations in order to comply.
- 4) Changes in the terms and conditions of this Agreement brought about as a result of recommendations approved by the Chief of Police, or his/her designee.
- 5) Proposed changes to the terms and conditions agreed upon by the Chief of Police and Operator at the time that this Agreement was signed (e.g., response times).

18. ADVERTISING

Operator shall not display any sign or engage in any advertisement indicating an official or unofficial connection with MBPD.

- 1) Examples include "Official MBPD Tow", "Approved by MBPD", "MBPD Tow" and the like.
- 2) This will not preclude the Chief of Police from implementing a system to mark and identify particular tow trucks as having passed MBPD inspection.

19. CANCELTION, TERMINATION AND EXEMPTIONS

This Agreement may be cancelled by City, for any reason or no reason, with or without cause, by giving 30 days' written notice to Operator. This Agreement may be cancelled by Operator, for any reason or no reason, with or without cause, by giving 120 days' written notice to City.

20. CONFLICTING CITY ORDINANCE OR WRITTEN POLICY PROVISION EXCEPTIONS

Any provision of this TSA that directly conflicts with one or more provisions of City's Municipal Code or written policy regulating tow service within the City's geographical boundaries shall not apply. In such circumstances, the conflicting City ordinance or written policy provisions shall apply, but all non-conflicting TSA provisions shall remain in full force and effect.

21. TERM OF AGREEMENT

The term of this Agreement shall be for a period of five years from the Effective Date through August 30, 2023 unless sooner terminated according to its own terms.

22. GENERAL

- A. Operator, and the agents and employees of Operator, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the City.
- B. Operator shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City Manager.
- C. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified or registered mail, postage prepaid, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

To Operator: Van Lingen Towing
2755 Lomita Boulevard
Torrance, California 90505

- D. At all times during the term of this Agreement, Operator shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.
- E. Governing Law; Venue
- 1) City and Operator understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the Parties to this Agreement and also govern the interpretation of this Agreement.
 - 2) Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City. In the event such litigation is filed by one Party against the other to enforce its rights under this Agreement, the prevailing Party, as determined by the Court's judgment, shall be entitled to reasonable attorney's fees and litigation expenses for the relief granted.

- F. No officer, or employee of the City who has participated in the development of this Agreement or its administration shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, and Operator, during his/her tenure or for one year thereafter. Operator hereby warrants and represents to City that no officer or employee of the City Council or City has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of Operator on this Agreement. Operator further agrees to notify City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.
- G. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each Party is entering into this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such party deems material.
- H. In carrying out the provisions of this Agreement, both Parties acknowledge and agree that time is of the essence.
- I. The person or persons executing this Agreement on behalf of Operator warrants and represents that he or she has the authority to execute this Agreement on behalf of Operator and has the authority to bind Operator to the performance of its obligations hereunder.
- J. Attachments. Attached hereto and incorporated herein by this reference are the following Exhibits:

ATTACHMENT A DEFINITIONS

**ATTACHMENT B GENERAL EQUIPMENT SPECIFICATIONS AND USE
REQUIREMENTS**


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

CITY OF MANHATTAN BEACH,
a California municipal corporation

Van Lingen Towing,
a California corporation

By: _____
Bruce Moe, City Manager

ATTEST:

By:  _____
Printed Name: ROBERT J. VANLINGEN
Title: PRESIDENT

By: _____
Liza Tamura, City Clerk

APPROVED AS TO FORM:

By: _____
Printed Name: _____
Title: _____

By:  _____
Quinn M. Barrow, City Attorney

APPROVED AS TO CONTENT:

By: _____
Stephanie Katsouleas, P.E.
Director of Public Works

APPROVED BY FINANCE DEPARTMENT:

By:  _____
Steve S. Charelian
Interim Finance Director

ATTACHMENT A

DEFINITIONS

1. BASE SERVICES

Any service or tow which is performed when the vehicle Operator or agent is present and the vehicle is not stored at the direction of MBPD.

2. EMPLOYEE

Employee shall include, but not be limited to, the Operator's employees, agents, associates, successors, predecessors in interest, independent contractors, and all other persons or entities Operator exercises control over that directly relate to the business of Operator, including, without limitation, proprietors, office employees, drivers, mechanics, anyone with access to towed vehicles or the storage yard, vehicle maintenance personnel and similar types of persons. This definition is intended to be inclusive rather than exclusive.

3. EXEMPTION

Written grant of temporary relief to an Operator from a specific required term of the Tow Service Agreement unrelated to any legal or safety requirements.

4. INCIDENT COMMANDER

The uniformed MBPD member present at the incident that has scene management responsibilities.

5. LOAD SALVAGE OPERATIONS

Any operation involving the recovery of a load which has been spilled, or the off-loading and reloading of a load from an overturned vehicle performed in order to upright the vehicle. This will be limited to operations involving Class B, C and D tow trucks

6. OPERATOR

A tow service, which has been issued a Letter of Authorization, has signed this TSA and is approved to receive MBPD referred calls in a particular geographical area. The term "Operator" refers to the company, its owner(s), and its manager(s) who have authority to enter into an Agreement with the City of Manhattan Beach for towing services and to conduct business in accordance with the terms of this Agreement, and its employees, independent contractors, and any agent of Operator.

7. PARTY OF INTEREST

Refers to the registered owner of the vehicle or his/her agent. An agent is a party who may lawfully act on behalf of the registered or legal owner of the vehicle.

8. PORTAL TO PORTAL

Service shall start at the time of departure from the place of business or point of dispatch, whichever is closer to the location of the call, and shall end at the estimated time of return to the place of business or the completion of the call, if another call is pending, whichever is shorter. Return to place of business includes a reasonable and verifiable amount of time required to place the tow truck back into service when unusual circumstances require additional time that is not part of normal operating procedures. (Examples: 1) 4 x 4 recovery in the mud: reasonable to charge for cleaning mud from truck and equipment; 2) burned car on car carrier: reasonable to charge for cleaning burn debris from carrier bed; 3) car towed from side of road on misty night and leaves mud track on bed of carrier: not reasonable to charge for cleaning of carrier bed.) For the purpose of this Agreement, "Portal to Portal" shall also mean "Portal to End of Service".

9. POSSESSION

Pursuant to section 3068 of the Civil Code, possession is deemed to arise when the vehicle is removed and is in transit.

10. PUBLIC SAFETY RESPONSE

A response which results in a storage of a vehicle at the direction of MBPD. This does not include storage at the request of the vehicle operator, registered owner, or agent.

11. RESPONSE TIME

The period of time from an Operator's notification of a call by MBPD's dispatcher, to the arrival of the tow truck at the location requested.

12. RETAIL RATE

The usual customary rate charged by Operator to individual retail customers. This is the competitive rate a company has posted in the office and quotes over the phone.

13. TOW TRUCK

A tow truck as defined in Section 615 of the California Vehicle Code. It also includes slide back carriers and wheel lift vehicles.

14. VEHICLE RECOVERY OPERATION

An operation involving the process of up-righting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle. This will normally be limited to operations requiring a Class B, C or D tow truck(s).

ATTACHMENT B

1. GENERAL EQUIPMENT SPECIFICATIONS AND USE REQUIREMENTS

A. Tow Truck and Car Carrier Classifications

Tow truck and car carrier classifications are based on the truck chassis GVWR and the classifications system used by the American Trucking Association (ATA) and truck manufacturers.

	ATA and Manufacturers Classifications	CHP Classifications
a.	Class 3 - 10,000 - 14,000 pounds GVWR	Class A Tow Trucks
b.	Class 4 - 14,001 - 16,000 pounds GVWR	Class A Tow Trucks
c.	Class 5 - 16,001 - 19,500 pounds GVWR	Class A Tow Trucks
d.	Class 6 - 19,501 - 26,000 pounds GVWR	Class B Tow Trucks
e.	Class 7 - 26,001 - 33,000 pounds GVWR	Class B Tow Trucks
f.	Class 8 - 33,001 or more GVWR	Class C & D Tow Trucks

B. Equipment Limitations

All towing equipment, recovery equipment and carrier ratings are based on structural factors only. Actual towing, carrying, and recovery capacity may be limited by the capacity of the chassis and the optional equipment selected.

C. Towing Limitations

- 1) The total weight of the truck, including the lifted load, shall fall within the GVWR and not exceed either the front axle weight ratings ("FAWR") or rear axle weight ratings ("RAWR").
- 2) The truck must meet all applicable state and/or federal standards.
- 3) The front axle load must be at least 50 percent of its normal or unladen weight after the load is lifted.

D. Identification Labels

Each piece of towing equipment shall have a label or identification permanently affixed to the equipment in a prominent location to identify the manufacturer, serial number, model, and rated capacity.

E. Recovery Equipment Rating

- 1) The basic performance rating of the recovery equipment is the weight the equipment can lift in a winching mode, when the boom is static at a 30-

degree elevation with the load lines vertical and the lifting cables sharing the load equally, measured with a live load (weight or load cell).

- (a) The structural design of the recovery equipment must have a higher load capacity than the performance rating(s).
- (b) Winches shall conform to or exceed the specifications set forth by the Society of Automotive Engineers ("SAE") Handbook, SAEJ706.
- (c) All ratings for cable and chain assemblies are for the undamaged assembly condition. All cable and chain assemblies should be the same type, construction, and rating as specified by the original equipment manufacturer ("OEM") for the equipment.

F. Safety Chains

- 1) Safety chains shall be rated at no less than the rating specified by the OEM.
 - (a) Two safety chains shall be used for vehicles being towed. The safety chains shall be securely affixed to the truck bed frame or wrecker boom, independent of the towing sling, bar or hitch, wheel lift, or underlift towing equipment. The towed vehicle shall be secured to the towing equipment independent of the safety chains by either two chains or two straps.
 - (b) Vehicles being transported on slide back carriers shall be secured by four tie-down chains or straps independent of the winch or loading cable.
 - (c) All safety connections and attachments shall have a positive means, of sufficient strength, to ensure that the safety connection or attachment cannot become disengaged while in transit.

G. Control/Safety Labels

All controls shall be clearly marked to indicate proper operation, as well as any special warnings or cautions.

H. Signs

All tow trucks shall display signs on both sides that contain Operator's company name, business address and telephone number. The signs shall be permanently affixed and in compliance with the requirements of Section 27907 of the California Vehicle Code.

I. Wire Rope (Cable)

Wire rope shall be maintained in good condition. Only wire rope with swayed ends, wedge locks, or braided ends, with metal sleeves in the loops, shall be approved for use by the CHP. Consistent with the California Code of Regulations, Title 13, Section 1305(b), wire

rope is not in good condition when it is stranded, knotted, crushed, excessively rusty, kinked, badly worn, when there are 12 or more wires broken in lay length, or where there is other visible evidence of loss of strength.

2. TOW TRUCK CLASSIFICATIONS AND EQUIPMENT SPECIFICATIONS

A. Class A Tow Truck

1) Minimum Equipment Specifications

- (a) 14,000 pound GVWR chassis.
- (b) Four-ton recovery equipment rating.
- (c) Hydraulic or mechanical winch(es).
- (d) 100 foot 3/8" 6 x 19 cable or original equipment manufacturers (OEM) specifications.
- (e) Tow chains, 5/16" alloy or OEM specifications, J/T hook assembly.
- (f) Safety chains, 5/16" alloy or OEM specifications.
- (g) Tow sling rating, 3,000 pounds, when equipped.
- (h) Wheel lifts safety straps or equivalent mechanical device.
- (i) All required wheel safety straps, or equivalent wheel retention device, tie-downs straps, and safety chains shall be used during towing operations.
- (j) Tow dolly.
- (k) One three-ton snatch block.

Wheel lift rating – retracted..... 3,000 pounds

85" extension* 3,000 pounds.

*Measured from the centerline of the rear axle of the towing vehicle to ten inches behind the back face of the lifting bar.

B. Class A Car Carrier – One Car

1) Minimum Equipment Specifications

- (a) 14,000 pound GVWR chassis.
- (b) Hydraulic or mechanical winch.
- (c) 50 foot 3/8" 6 x 19 cable or OEM specifications.

- (d) J/T hoof: loading bridle/chains.
- (e) Safety Chains, 5/16" alloy or OEM specifications; four safety chains for the vehicle being transported.
 - (1) All required tie-down straps and safety chains shall be used as required during towing operations.

C. Class A Car Carrier – Two Cars

- 1) Minimum Equipment Specifications
 - (a) 16,001 pound GVWR chassis.
 - (b) Hydraulic or mechanical winch.
 - (c) 50 foot 3/8" 6 x 19 cable or OEM specifications.
 - (d) J/T hooks loading bridle/chains.
 - (e) Safety chains 5/16" alloy or OEM specifications; four safety chains for the vehicle being transported and two safety chains for the vehicle being towed.
 - (1) All required tie-down straps and safety chains shall be used during towing operations.

D. Class B Tow Truck

- 1) Minimum Equipment Specifications
 - (a) 26,001 pound GVWR chassis.
 - (b) Air brakes or hydraulic w/air hookup package.
 - (c) 14-ton recovery equipment rating.
 - (d) Hydraulic or mechanical winch(es).
 - (e) 150 foot 7/16" 6 x 19 cable or OEM specifications.
 - (f) Tow chains, Y2" alloy or OEM specifications.
 - (g) Safety chains, Y2" alloy or OEM specifications.
 - (h) Tow sling rating 7,000 pounds.
 - (i) Two eight-ton snatch blocks.
 - (j) Wheel lifts safety straps or equivalent mechanical device.

(1) All required wheel safety straps, or equivalent wheel retention device, tie-down straps, and safety chains shall be used during towing operations.

(k) Wheel lift or under lift rating retracted 10,000 pounds
85" extension* 8,000 pounds.

*Measured from the centerline of the rear axle of the towing vehicle to ten inches behind the back face of the lifting bar or from the center line of the rear axle to the center of the lift forks.

E. Class B Car Carrier

1) Minimum Equipment Specifications

(a) 26,001 pound GVWR chassis.

(b) Hydraulic or mechanical winch.

(c) 50 foot 3/8" 6 x 19 cable or OEM specifications.

(d) J/T hooks loading bridle/chains.

(e) Safety chains, 5/16" alloy or OEM specifications; four safety chains for each vehicle being transported and two safety chains for the vehicle being towed.

(1) All required tie-down straps and safety chains shall be used during towing operations.

F. Class C Tow Truck

1) Minimum Equipment Specifications

(a) 48,000 pound GVWR chassis.

(b) Air brakes w/air hookup package and single control compressor.

(c) 25-ton recovery equipment rating.

(d) Hydraulic or mechanical winch(es).

(e) 200 foot 5/8" 6 x 19 cable or OEM specifications.

(f) Tow chains, 5/8" alloy or OEM specifications.

(g) Safety chains, 5/8" alloy or OEM specifications.

(h) Tow sling rating 12,000 pounds.

(i) Two 12-ton snatch blocks.

- 9) Covered trash can(s) with absorbent.
- 10) Shop rags and/or paper towels.
- 11) Shop to truck communications.

B. Service and Other Equipment

For service calls, each tow truck shall be equipped with the follow service equipment.

- 1) Adequate emergency supply of fuel in an approved container.
- 2) Booster battery or hotbox starting system.
- 3) Hydraulic jack capable of handling passenger cars and light trucks.
- 4) Metric and standard lug wrenches.
- 5) Rubber mallet/hub cap tool.
- 6) Lockout tools.
- 7) Motorcycle straps (Class A only).
- 8) Sledge hammer.
- 9) Tool kit may include:
 - (a) Assorted open-end wrenches; standard, 1/4" – 7/8" and Metric, 6-19 mm.
 - (b) Assorted screwdrivers; Straight blade and Phillips.
 - (c) Crescent wrench.
 - (d) Ball peen hammer.
 - (e) Pliers.
 - (f) Battery and terminal cleaning tools.
 - (g) Mechanic's wire.
 - (h) Plastic electrical tape/duct tape.
 - (i) Tire valve core tool.
 - (j) Miscellaneous fuses.
 - (k) Small pry bar.

- (l) Socket Sets: 1/4" – 1" and 6-19 mm.
- (m) Ratchet and extensions.

C. Class A

1) Required Equipment

- (a) One three-ton rated snatch block.
- (b) Towing sling – J/T hook tow chain assembly, a 4" x 4" x 48" and a 4" x 4" x 60" wooden crossbeam, a pair of spacer blocks, a steering wheel clamp, a towing dolly and safety chains.
- (c) Wheel lift – Wheel safety straps or equivalent mechanical device, steering wheel clamp, towing dolly and safety chains.
- (d) Car carrier – J/T hook loading bridle, a 4" x 4" x 48" and a 4" x 4" x 60" wooden crossbeam, a pair of spacer blocks and two pairs of safety chains.

D. Class B

1) Required Equipment

- (a) Towing sling – J/T hook tow chain assembly, a 4" x 4" x 48" and a 4" x 4" x 60" wooden crossbeam, a pair of spacer blocks, a steering wheel clamp, a towing dolly and safety chains.
- (b) Wheel lift – Wheel safety straps or equivalent mechanical device, steering wheel clamp, towing dolly, and safety chains.
- (c) Truck hitch – Tow chain assembly, 4" x 4" x 48" and 6" x 6" x 60" wooden crossbeams (as necessary), aluminum tow angle(s), and safety chains.
- (d) Under lift – Assortment of lift forks/adaptors, safety tie-down chains, and safety chains.
- (e) Two 8-ton rated snatch blocks.
- (f) Axle covers/caps.
- (g) Air hoses and necessary fittings to provide air to the towed vehicle.

E. Classes C and D

- (a) Towing sling – Tow chain assembly, a 4" x 4" x 60" and a 6" x 6" x 60" wooden crossbeam, a pair of spacer blocks, a steering wheel clamp, and safety chains.

- (b) Truck hitch – Tow chain assembly, 4" x 4" x 60" and 6" x 6" x 60" wooden crossbeams (as necessary), aluminum tow angle(s), and safety chains.
- (c) Under reach – Assortment of lift forks/adapters, safety tie-down chain(s), and safety chains.
- (d) Steering wheel clamp.
- (e) Two 12-ton rated snatch blocks.
- (f) Axle covers/caps.
- (g) Air hoses and necessary fittings to provide air to the towed vehicle.